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In re Application of :
MAZZIOTTI, Philip :
Application No.: 10/564,072 : DECISION ON SUBMISSION OF
PCT No.: PCT/US04/21916 : DECLARATION EXECUTED BY
Int. Filing Date: 09 July 2004 : GUARDIAN
Priority Date: 10 July 2003 :
Attorney Docket No.: 479.0004 :
For: JOINT SEAL

This decision is issued in response to the 03 July 2006 submission of a declaration executed on behalf of inventor Philip J. Mazziotti by his guardian, Michelle Mazziotti. No petition fee is required.

BACKGROUND

On 09 July 2004, applicant filed international application PCT/US04/21916, which claimed a priority date of 10 July 2003. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 27 January 2005. Pursuant to 37 CFR 1.495, the deadline for payment of the basic national fee in the United States was to expire 30 months from the priority date, 10 January 2006.

On 10 January 2006, applicant filed a transmittal letter for entry into the national stage in the United States accompanied, inter alia, by: the basic national fee; a copy of the international application; and an application data sheet.

On 01 May 2006, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Missing Requirements (Form PCT/DO/EO/905) requiring an oath or declaration in compliance with 37 CFR 1.497 and the surcharge fee required under 37 CFR 1.492(e). The notification set a two-month time limit in which to respond.

On 03 July 2006, applicant filed a declaration executed by Michele Mazziotti on behalf of sole inventor, Philip J. Mazziotti.

DISCUSSION

As noted above, applicant has filed a declaration executed on behalf of the inventor by his guardian. A declaration executed on behalf of an inventor by his/her guardian may be accepted only if the application falls within the scope of 37 CFR § 1.42 or 37 CFR § 1.43.

37 CFR § 1.42 states:

In case of the death of the inventor, the legal representative (executor, administrator, etc.) of the deceased inventor may make the necessary oath or declaration, and apply for and obtain the patent.

37 CFR § states:

In case an inventor is insane or otherwise legally incapacitated, the legal representative (guardian, conservator, etc.) of such inventor may make the necessary oath or declaration, and apply for and obtain the patent.

Here, applicant has not indicated which of the above provisions the declaration filed 03 July 2006 is submitted under.

Before the declaration can be accepted, applicant must provide a statement indicating that the non-signing inventor, Philip J. Mazziotti is either deceased (37 CFR § 1.42) or "insane or otherwise legally incapacitated" (37 CFR § 1.43). Further, the "Letter of Guardianship" was not included with the present papers. If neither of these regulations applies to the circumstances present here, then a declaration in compliance with 37 CFR 1.497 executed by Philip J. Mazziotti is required.

CONCLUSION

For the above reasons, the declaration filed 03 July 2006 on behalf of applicant/inventor Philip J. Mazziotti is **REFUSED** without prejudice.

Applicants have **TWO (2) MONTHS** from the mail date of the present decision to submit a proper response. Such response should include either: (1) a statement confirming that non-signing inventor Philip J. Mazziotti is either deceased or "insane or otherwise legally incapacitated;" or (2) an oath or declaration in compliance with 37 CFR 1.497 executed by Philip J. Mazziotti.

Extensions of time are available under 37 CFR 1.136(a). Failure to file a proper response will result in abandonment of the application.

Any further correspondence with respect to this matter should be addressed to Mail Stop PCT, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450,

with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

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